

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 578 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

GUJARAT GAS COMPANY LTD.

Versus

S K KHANDEKAR -MANAGING DIRECTOR-VANAZ ENGINEERS LTD.

Appearance:

Mr.K.N.Raval, Sr.Advocate with
Mrs. PJ DAVAWALA for Petitioner
MR AKSHAY H MEHTA for Respondent No. 1

CORAM : MR.JUSTICE R.BALIA.

Date of decision: 04/02/98

ORAL JUDGEMENT

This appeal has arisen in the following circumstances. Gujarat Gas Company has filed a suit for specific performance of agreement with the defendant respondents, concerning amalgamation of respondent no.2 company with plaintiff company which was agreed to while sponsoring a scheme for the revival of respondent no.2 company, which had become sick and proceedings in that respect were before BIFR. At one point of time the said scheme was sanctioned by BIFR which according to the statement of both the learned Counsel later on was set aside on an appeal by the sick company before AAIFR.

While proceedings were pending before BIFR & AAIFR the present plaintiff appellant has filed the suit for specific performance and has also asked for temporary injunction against defendants through notice of motion on 27.4.94. As a result of the memo of understanding arrived between the parties ad-interim order was granted in terms of para 24(b) of the notice of motion until further orders. Against the order dated 27.4.94, the defendants filed appeal no.145/94. The ad-interim order dated 27.4.94 was modified by trial Court by its order dated 4.5.97 permitting the defendants to sell 2 of its machines as prayed for by the defendants.

2. The appeal no.145/94 was decided by this court on 21st January, 1995 considering that ad-interim order has been made as a result of memo of understanding and even written statement has not been filed to application exh.5, the court did not consider it appropriate to adjudicate on the merits of the case. However, the court further considered that as the point involved in the main suit is short one and in case the parties agree before the Trial Court, the suit can also be disposed of on the basis of affidavit evidence as suggested by the court and to which both the learned counsel has consented to endeavour, the court directed that the civil Court may decide the main suit as expeditiously as possible, preferably within one year from the date of the certified copy of the order is made available to the City Civil Court and in the meantime instead of the ad-interim injunction granted by the Civil Court in terms of para. 24(b) Exh.5 rights of the parties will be governed by the following terms:

"The appellant shall maintain status quo as prevailing on 26.4.94 and shall not alienate the immovable properties of appellant no.2 company and shall not commit the company for anything having long term implications on the operations of the Company's properties."

With these directions, the appeal was disposed of.

3. Thereafter, a Misc. C. A. No.60/96 was moved in appeal from orders no.145/94 seeking modification of the order on the ground that proceedings before BIFR has proceeded further and BIFR has granted permission to sell surplus 2 rubber injection moulding machines after following appropriate sale procedure on 5.9.95. While BIFR has granted permission to dispose of the aforesaid properties but the injunction passed in A.O.No.145/94

being operating for maintaining status quo as on 26.4.94 same was required to be modified to avail the permission by BIFR. The Court disposed the Civil application by observing that:-

"The applicants may approach the concerned City Civil Court where the main matter is still said to be pending. Should the present applicants approach the concerned City Civil Court with any application on the basis of the BIFR's order dated 5.9.95, the City Civil Court, Ahmedabad may pass appropriate orders thereon in accordance with law in the light of the subsequent order dated 5.9.95 passed by BIFR and this court's order dated 21.1.95 to maintain status quo as prevailing on 26.4.94 will be no impediment against the concerned City Civil Court, Ahmedabad from passing any appropriate order in accordance with law, which deems proper in the facts and circumstances of this case."

4. This order was made on 27.2.96. Thereafter by the impugned order dated 29.10.97 the City Civil Court No.2 has rejected plaintiffs notice of motion and interim relief granted earlier has been vacated. It is this order which is subject matter of present appeal by the plaintiffs.

5. From the facts stated above it is apparent that when the defendant has approached earlier against ad-interim order passed on notice of motion on 27.4.94, this court keeping in view the facts and circumstances of the case and the nature of the dispute arising in the suit has directed the Trial Court to decide the suit itself as soon as possible within a period of 1 year leaving it to the agreement of the parties whether the suit is to be decided on affidavit evidence or they want to lead other evidence whether documentary or oral as far as possible within a period of one year and meantime the defendants were injuncted by the directions quoted above. Thus in effect when the order of Trial Court merged in the order of appeal dated 21.1.95 which resulted in effective disposal of notice of motion by High Court substituting its own order in place of ad-interim order during the pendency of the suit. Thereafter, there was no room for the Trial Court to have adjudicated upon the notice of motion afresh before the decision of the suit unless a fresh application was moved for vacating interim order or modification in terms thereof. It is further to be noticed that the same defendant has on earlier occasion has in the first instance moved this court for seeking permission to dispose of properties permitted to be sold by BIFR so as not to violate the terms of

injunction order made in A.O.No.145/94. It is rather unfortunate that either party has not brought to notice of the Trial Court this position and much of the time of the Trial Court has been taken on interlocutory matter instead of the proceeding with the main suit which was the clear direction of the court in its order dated 21.1.95. The second order of the court referred to above had only permitted the defendant to seek necessary orders required in pursuance of order of BIFR dated 5.9.95 and no more. It has not left it in the discretion of the trial Court to decide notice of motion afresh and pass fresh order on it.

6. The order under appeal clearly amounts to vacating the order passed by this court ostensibly on an application which could not be said to be anymore pending. The order under appeal cannot be sustained and is set aside. The appeal is allowed. No order as to costs.

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